

1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

3 Case No. 16-11700-smb

4 - - - - - x

5 In the Matter of:

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7 GAWKER MEDIA, LLC,

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9 Debtor.

10 - - - - - x

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12 United States Bankruptcy Court

13 One Bowling Green

14 New York, NY 10004

15

16 December 12, 2017

17 10:29 AM

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21 B E F O R E :

22 HON STUART M. BERNSTEIN

23 U.S. BANKRUPTCY JUDGE

24

25 ECRO: F. FERGUSON

1 HEARING re Pre-Trial Conference

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25 Transcribed by: Sonya Ledanski Hyde

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6 BY: DILAN E. ESPER (TELEPHONICALLY)

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8 ALSO PRESENT TELEPHONICALLY:

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10 RYAN GOLDBERG

11 THOMAS HENTOFF

12 JASON N. KESTECHER

13 ALEX MCGEE

14 LAN NGUYEN

15 LYNN OBERLANDER

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1 P R O C E E D I N G S

2 THE COURT: Gawker.

3 MR. PATEL: Good morning, Your Honor.

4 THE COURT: Good morning.

5 MR. PATEL: Dipesh Patel, Saul Ewing Arnstein &
6 Lehr behalf of Ryan Goldberg.

7 THE COURT: Okay.

8 MR. FLAXER: Jonathan Flaxer of Golenbock Eiseman
9 Assor Bell & Peskoe on behalf of Mr. Abusack and Pregame
10 LLC.

11 THE COURT: Okay.

12 MS. BIERUT: Elizabeth Bierut of Ropes & Gray on
13 behalf of the plan administrator.

14 THE COURT: Okay.

15 MR. PATEL: Good morning, Your Honor. We're today
16 in connection with a pretrial conference related Ryan
17 Goldberg's motion to enforce the third-party release
18 language and be confirmed --

19 THE COURT: All right.

20 MR. PATEL: -- for that plan. When we were here
21 in September of this year, Your Honor, after some motion
22 hearing, Your Honor directed the parties to conduct
23 discovery. The deadline to complete discovery was November
24 30th. The parties did complete discovery. There are no
25 open discovery disputes, Your Honor. And today, we ask Your

1 Honor for a trial date, subject to Your Honor's
2 availability. We are hoping for a time, or a date on
3 February 13th and February 15th.

4 THE COURT: I don't usually try cases on Tuesday
5 and Thursday. How about February 14th? That's a Wednesday.

6 MR. FLAXER: Your Honor, that's fine with us. I
7 should have noted that my counsel, Dilan Esper of the
8 firm should be on the phone. But --

9 MR. DILAN: Yep, I am. Good morning, Your Honor.

10 THE COURT: Good morning.

11 MR. FLAXER: Your Honor, after discovery, we have
12 a view that can be resolved by dispositive motion. We don't
13 think there are any -- we don't see any disputes about the
14 facts or the underlying events or any of the documents --

15 THE COURT: Well, last time we were together, I
16 thought that there were two aspects of the confirmation
17 order that were ambiguous.

18 MR. FLAXER: Yes.

19 THE COURT: And you're telling me that they have
20 been resolved? The ambiguity has been resolved?

21 MR. FLAXER: No, what we're suggesting is that
22 we've deposed all the witnesses --

23 THE COURT: Right.

24 MR. FLAXER: So, all the testimony is recorded.
25 The direct could be submitted by declaration, and we can

1 designate the parts of the transcripts that we think
2 complete the record. All we have in terms of documents or
3 emails and versions of the plan, which there are no disputes
4 about authenticity or like privilege that I'm aware of. So,
5 we think it may be a way to save some time --

6 THE COURT: Sounds to me like --

7 MR. FLAXER: -- just put it out there.

8 THE COURT: -- take more time to make a motion for
9 summary judgment, which is what you're really talking about,
10 then to have a trial which sounds like it's going to last
11 maybe day. And I don't know to what extent there's
12 extrinsic evidence.

13 MR. FLAXER: Okay.

14 THE COURT: If that's the bottom line that there's
15 no extrinsic evidence, then I will -- essentially is a
16 motion for summary judgment at that point.

17 MR. FLAXER: Okay.

18 THE COURT: If you prefer to have a trial, I'll
19 put it down for February 14th at 10:00 AM. You can exchange
20 witness lists and exhibits a week before.

21 MR. FLAXER: I should probably note that shortly
22 we'll be making a Daubert motion with respect to their
23 expert.

24 THE COURT: An expert on what?

25 MR. PATEL: On, Your Honor, the second issue with

1 regard to willful misconduct and gross negligence in the
2 media industry. The two issues before Your Honor --

3 THE COURT: Isn't it -- this is a provision in the
4 plan, wasn't it?

5 MR. PATEL: Correct. But the two issues before
6 Your Honor is what does (indiscernible) received mean, and
7 that's part 1 and part 2, is willful misconduct and gross
8 negligence and whether the types of claims alleged in the
9 State Court complaint takes the protections away from the
10 release. And the purpose of the expert is to say in the
11 media industry, because our position is you have to look at
12 the context of the industry on a case-by-case basis. And in
13 the publication industry, willful misconduct and gross
14 negligence has a certain meaning. And it doesn't mean
15 there's no coverage or insurance coverage.

16 THE COURT: I don't know if it's an appropriate
17 area for expert testimony, but (indiscernible) witnesses and
18 make your motion. What's the basis of your motion? That
19 it's just a legal -- it's a question of interpreting the
20 phrase in the confirmation order?

21 MR. FLAXER: Yes, more or less. But I would defer
22 it to Mr. Esper, who took a deposition, if Your Honor would
23 like more than that.

24 THE COURT: Well, I think I've heard enough about
25 what the proposed testimony is. All right. But exchange

1 witness lists and your exhibits a week before. Okay?

2 MR. PATEL: Your Honor, in regard to post-trial
3 briefing, we --

4 THE COURT: You haven't had the trial yet.

5 MR. PATEL: Oh, understood. If Your Honor would
6 like a scheduling order with regard to the trial and if we -
7 -

8 THE COURT: I may not need those trial briefings.

9 MR. PATEL: Okay.

10 THE COURT: But does it make sense to have a
11 pretrial order, however short it may be, with designations
12 of testimony in those things in it?

13 MR. FLAXER: I think so. I think it'll be
14 helpful.

15 MR. PATEL: Yes, Your Honor.

16 THE COURT: All right. Why don't we do that. Why
17 don't you submit a proposed pretrial order, and let's say by
18 the 7th?

19 MR. FLAXER: Of February?

20 THE COURT: Yeah. What I would like, though, is -
21 - who's the movant?

22 MAN 1: They are.

23 THE COURT: You're the movant. You can use
24 numbers, you can use letters. And separately mark your
25 exhibits in the pretrial order. Don't say all checks or all

1 emails or something, you know, Exhibit 1, that's not
2 helpful. So separately mark your exhibits. If you have a
3 packet that's related, I guess you can mark it as one
4 exhibit, and indicate -- I have a form pretrial order on the
5 website which you can use. Okay.

6 MR. FLAXER: I have it.

7 THE COURT: Thanks very much.

8 MR. PATEL: Thank you.

9 MR. FLAXER: Thank you, Your Honor.

10 MR. ESPER: Thank you, Your Honor.

11 THE COURT: Thank you.

12 (Whereupon these proceedings were concluded at
13 10:36 AM)

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C E R T I F I C A T I O N

I, Sonya Ledanski Hyde, certified that the foregoing
transcript is a true and accurate record of the proceedings.

Sonya
Ledanski Hyde

Digitally signed by Sonya
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Date: December 13, 2017